

APPEAL NO. 021781  
FILED AUGUST 22, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 2002. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury and did not have disability. On appeal, the claimant contends that the hearing officer erred in denying her Motion to Include an Additional Disputed Issue, which was filed the day prior to the hearing. The claimant essentially argues that had the requested issue been added, she would have prevailed on the compensability and disability issues. The respondent (carrier) argues that the hearing officer did not err in refusing to add the requested issue and urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

One day prior to the scheduled hearing, the claimant filed a motion with the local field office requesting that she be granted a continuance in order to allow for the inclusion of the following issue:

Did Carrier fail to meet the seven day deadline to begin paying benefits or to give written notice of its refusal to pay benefits of claimant's claimed injury pursuant to Section 409.021(a), Texas Labor Code?

The hearing officer denied the motion for continuance and the claimant does not appeal that ruling. The request to add an additional issue was also denied and the claimant contends that the hearing officer erred in so denying.

Section 410.151(b) provides, in part, that an issue not raised at a benefit review conference (BRC) may not be considered unless the parties consent or, if the issue was not raised, the Texas Workers' Compensation Commission determines that good cause exists for not requesting the issue at the BRC. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.7 (Rule 142.7) provides that additional issues may be added by a party responding to the BRC report no later than 20 days after receiving it, by unanimous consent in writing no later than 10 days before the hearing, and on the request of a party if the hearing officer finds good cause. The issue of whether the carrier timely disputed the claimed injury was not raised at either the March 26, 2002, or the April 23, 2002, BRC, and was not requested within 20 days after receiving the BRC report. In making his ruling, the hearing officer noted that the claimant was relying on the recent Texas Supreme Court decision in Continental Casualty Company v. Downs, (Case No.

00-1309),<sup>1</sup> and made the distinction that the beneficiary of the deceased in the Downs case had raised the issue of timely contest at the BRC. The hearing officer found that the claimant did not timely request to add the issue and that there was no good cause for allowing the issue to be added. We perceive no abuse of discretion on the part of the hearing officer denying the motion requesting to add the additional issue. Downer v. Aquamarine Operations, Inc., 701 S.W.2d 238 (Tex. 1985). Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986).

Whether the claimant sustained a compensable injury and had disability were factual questions for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). The hearing officer noted that he did not find the claimant to be credible and found against her on the disputed issues. Nothing in our review of the record indicates that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

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<sup>1</sup> We also note that the Texas Workers' Compensation Commission is not implementing the Downs decision until the motion for rehearing process has been exhausted. See TWCC Advisory No. 2002-08 (June 17, 2002), and Texas Workers' Compensation Commission Appeal No. 021635, decided July 31, 2002.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY  
800 BRAZOS  
AUSTIN, TEXAS 78701.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Susan M. Kelley  
Appeals Judge

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Roy L. Warren  
Appeals Judge